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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,679	12/19/2001	Gilbert Patrick	P045 1051	6565

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EXAMINER

HURLEY, SHAUN R

ART UNIT	PAPER NUMBER
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3765

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DATE MAILED: 03/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

10/025,679

Applicant(s)

PATRICK, GILBERT

Examin r

Shaun R Hurley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-13, 16-18 and 20-29 is/are pending in the application.
- 4a) Of the above claim(s) 23, 25, 28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 6-13, 16-18, 20-22 and 26 is/are rejected.
- 7) ☒ Claim(s) 2, 3, 24 and 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 25, 28, and 29 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claim a composite structure comprising a mat and yarn

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Likewise, claim 23 is withdrawn from consideration as pertaining to the same composite mat. While claim 23 was originally present in the application, it was subject to a 112 second paragraph rejection as being unclear. Since Examiner could not ascertain what Applicant was attempting to claim, he did not further treat the claim on its merits. Claim 23 recites a composite mat, and as such, is subject to the restriction as discussed above. Accordingly, claims 23, 25, 28, and 29 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Objections

2. Claim 27 is objected to because of the following informalities: the claim states “the core fibers and sheath fibers”, which have yet to be claimed. While Examiner understands what is being claimed, he advises Applicant to consider revision since as written the assumption is made that the yarns are core sheath in the previous claim, which may not be true. Appropriate correction is required.

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Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4, 6, 13, 16-18, 20-22, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Hall et al (3208125).

Hall teaches a core-spun yarn of staple length fibers needled substantially through a centerline of the yarn (Figure 5; twisted and needled) wherein the core and sheath have different material properties including liquid absorption and abrasion resistance (Column 3, lines 30-33). In regards to having a staple length of three inches or less, Hall teaches staple length fibers, and as such, inherently teaches such lengths. As further support of this, Hatch (Textile Science) on page 90 teaches us that term staple length inherently includes the lengths of 3 inches and less.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall in view of Hatch's Textile Science.

Hall essentially teaches the invention as discussed above, but fails to specifically teach Dref, open-end, vortex, and worsted spinning. Hatch teaches that all are well known core spun

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yarns. It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to utilize any of the myriad of spinning methods to create the core spun yarn of Hall. Hall teaches a core spun yarn may be utilized, and core spun yarns can be made by numerous methods. Since Hatch teaches that all are well known methods of creating a core spun yarn, it would have been obvious to the ordinarily skilled artisan to utilize them to create the yarn of Hall; all of which would provided the claimed necessary structure.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1, 13, and 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6311375.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the method of Patrick '375 teaches a method of creating a needled core-spun yarn who's patentability is based on specific yarn properties which obviously read upon those of the instant application. It is noted that Applicant stated in his reply that a Terminal Disclaimer was filed therewith, however, Examiner advises Applicant that no such Terminal Disclaimer was filed and no subsequent fee paid. As such, the rejection remains.

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Allowable Subject Matter

9. Claims 2, 3, 24, and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments filed 18 November 2003 have been fully considered but they are not persuasive.

Applicant's main argument is that Hall fails to teach spun yarn having staple fibers. Not only is this incorrect, but Applicant actually cites the exact text which teaches such. In column 3, lines 30-33, Hall states:

The yarns in the combination above need not be of the same chemical composition or fiber form. Continuous filament synthetic, **staple synthetic fibers, cotton, wool, glass fibers**, etc. can be used.

As such, Hall not only teaches staple length fibers, but also teaches the use of differing fibers in each yarn, Applicant's secondary argument. As such, cotton and glass could be used. In that scenario, the cotton yarn would provide improved liquid absorption over the glass, and the glass yarn would provide improved abrasion resistance of the cotton. The core/sheathed resultant yarn would have component yarns of differing material properties. Since Hall teaches such, he most certainly anticipates the claimed invention.

Rather than address the prior art of record for what it teaches, Applicant has attempted to overcome the rejections by citing selected portions of Hall, and as such, his arguments are flawed. Hall does not teach solely a continuous filament core/sheath yarn, but rather teaches many different combinations, including the use of specific staple fibers.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shaun R Hurley whose telephone number is (703) 605-1236. The examiner can normally be reached on Mon - Fri, 6:30am - 3:00pm, off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SRH

08 March 2004


JOHN J. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY 700